

**STATE OF CONNECTICUT
OFFICE OF THE STATE COMPTROLLER
DEPENDENT CARE ASSISTANCE PLAN**



PLAN DOCUMENT

Restated and Amended as of January 1, 2017

TABLE OF CONTENTS

ARTICLE I
DEFINITIONS

ARTICLE II
PARTICIPATION

2.1 ELIGIBILITY3
2.2 EFFECTIVE DATE OF PARTICIPATION3
2.3 APPLICATION TO PARTICIPATE3
2.4 TERMINATION OF PARTICIPATION3
2.5 CHANGE OF EMPLOYMENT STATUS.....4
2.6 TERMINATION OF EMPLOYMENT.....4
2.7 SPEND DOWN PROVISION.....4
2.8 DEATH4

ARTICLE III
CONTRIBUTIONS TO THE PLAN

3.1 SALARY REDIRECTION.....5
3.2 APPLICATION OF CONTRIBUTIONS.....5
3.3 REFUND OF POST-TERMINATION CONTRIBUTIONS6

ARTICLE IV
BENEFITS

4.1 BENEFIT OPTIONS.....6
4.2 NONDISCRIMINATION REQUIREMENTS6

ARTICLE V
PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS.....7
5.2 SUBSEQUENT ANNUAL ELECTIONS.....7
5.3 FAILURE TO ELECT.....7
5.4 CHANGE IN STATUS7

ARTICLE VI
DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

6.1 ESTABLISHMENT OF ACCOUNT8

6.2	DEFINITIONS	8
6.3	DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS.....	10
6.4	INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS.....	10
6.5	DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS.....	10
6.6	ALLOWABLE DEPENDENT CARE REIMBURSEMENT.....	10
6.7	ANNUAL STATEMENT OF BENEFITS.....	10
6.8	FORFEITURES.....	11
6.9	LIMITATION ON PAYMENTS	11
6.10	NONDISCRIMINATION REQUIREMENTS	11
6.11	DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS.....	11
6.12	POST-TERMINATION CLAIMS.....	12

ARTICLE VII
BENEFITS AND RIGHTS

7.1	CLAIM FOR BENEFITS	13
7.2	APPLICATION OF BENEFIT PLAN SURPLUS	14

ARTICLE VIII
ADMINISTRATION

8.1	PLAN ADMINISTRATION.....	14
8.2	EXAMINATION OF RECORDS	15
8.3	PAYMENT OF EXPENSES.....	15

ARTICLE IX
AMENDMENT OR TERMINATION OF PLAN

9.1	AMENDMENT	15
9.2	TERMINATION	15

ARTICLE X
MISCELLANEOUS

10.1	PLAN INTERPRETATION.....	15
10.2	GENDER AND NUMBER.....	16
10.3	WRITTEN DOCUMENT.....	16
10.4	EXCLUSIVE BENEFIT.....	16
10.5	PARTICIPANT'S RIGHTS.....	16
10.6	ACTION BY THE EMPLOYER	16

10.7	NO GUARANTEE OF TAX CONSEQUENCES	16
10.8	INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS.....	17
10.9	FUNDING	17
10.10	GOVERNING LAW	17
10.11	SEVERABILITY.....	17
10.12	CAPTIONS.....	17
10.13	FAMILY AND MEDICAL LEAVE ACT (FMLA).....	17
10.14	UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA).....	18

**STATE OF CONNECTICUT
OFFICE OF THE STATE COMPTROLLER
DEPENDENT CARE ASSISTANCE PLAN**

INTRODUCTION

The Office of the State Comptroller, on behalf of the State of Connecticut, (“the Employer”), pursuant to Connecticut General Statute Section 5-264b, has administered a Dependent Care Assistance Plan (“the Plan”) for state employees since 1995. The Plan is hereby amended and restated as of January 1, 2017.

It is the intention of the Employer that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986 (“the Code”), as amended, and that the benefits shall be used to reimburse the employee for expenses incurred for dependent care which are eligible for reimbursement under the provisions of Section 129 of the Code..

**ARTICLE I
DEFINITIONS**

1.1 **"Administrator"** means the individual(s), entity, or corporation appointed by the Employer to carry out the administration of the Plan. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit"** means the benefit available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefits as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under Code Section 152 (as modified by Code Section 105(b)).

1.8 **"Effective Date"** means July 1, 1995, as revised as of January 1, 2017.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

Any Employee who is a "part-time" Employee shall not be eligible to participate in this Plan. A "part-time" Employee is defined as any Employee who works, or is expected to work on a regular basis, less than 0.5 full time equivalent (FTE). Per diem, sessional, temporary or seasonal workers, adjunct faculty members, and graduate assistants are not eligible to participate in the Plan. Former employees and rehired retirees shall not be eligible to participate in the Plan.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means State of Connecticut. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the IRS regulations thereunder.

1.14 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.15 **"Plan"** means this instrument, including all amendments thereto.

1.16 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.17 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to the account established under the Plan under Article V.

1.18 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all

or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant. For purposes of the Plan, the Salary Redirection Agreement means the "Enrollment Form" (the Form) or completion of the equivalent process using the Administrator's online enrollment facility.

1.19 **"Spouse"** means the legally married husband or wife of a Participant, but does not include an individual legally separated from a Participant under a court decree of legal separation.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder within 31 days of commencing employment (or the Effective Date of the Plan, if later).

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the date when his completed application to participate in the Plan has been accepted by the Administrator in accordance with Section 2.3. An Employee who meets the eligibility requirements of this section during a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he/she elects to do so no more than 31 days after their date of hire.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, submit the Benefit Enrollment Form to the Administrator or complete the Administrator's online enrollment process. Such election will be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.6;
- (b) **Change in employment status.** The end of the Plan Year during which the Participant became a limited Participant due to a change in employment status pursuant to Section 2.5;
- (c) **Death.** The Participant's death, subject to the provisions of Section 2.7; or

(d) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 9.2.

2.5 CHANGE OF EMPLOYMENT STATUS

If a Participant ceases to be eligible to participate because of a change in employment status or classification (other than through termination of employment), the Participant shall become a limited Participant in this Plan for the remainder of the Plan Year in which such change of employment status occurs. As a limited Participant, no further Salary Redirection may be made, and, except as otherwise provided herein, all further Benefit elections shall cease. If the limited Participant later becomes an Eligible Employee, then the limited Participant may again become a full Participant in this Plan, provided he otherwise satisfies the participation requirements set forth in this Article II as if he were a new Employee and made an election in accordance with Section 5.1.

2.6 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Dependent Care Flexible Spending Account shall cease and no further Salary Redirection contributions shall be made. Any balances in the terminated Participant's Dependent Care Flexible Spending Account as of the date of termination may be used for any allowable employment-related Dependent Care Expenses incurred during the Plan Year in which termination occurs, provided that all requirements of Code Sections 125 and 129 are met.

2.7 SPEND DOWN PROVISION

If a Participant terminates service with a Dependent Care Flexible Spending Account balance and subsequently becomes employed with another eligible employer he or she may claim eligible expenses against his/her account balance in accordance with Sections 6.11 and 6.12 below, provided that all requirements of Code Sections 125 and 129 are met.

2.8 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's surviving spouse may submit claims for expenses or benefits for the remainder of the Plan Year or until the funds in the Participant's Dependent Care Flexible Spending Account are exhausted. In no event may reimbursements be paid to someone who is not a surviving spouse.

**ARTICLE III
CONTRIBUTIONS TO THE PLAN**

3.1 SALARY REDIRECTION

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder. The Employer shall allow each Participant to agree to reduce his pay during the Plan Year by an amount determined necessary to purchase the DCAP. The amount of such Salary Redirection shall be specified in the Form or during the online enrollment process and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be allocated to the Dependent Care Flexible Spending Account pursuant to the Participant's election under Article V.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial election pursuant to Section 5.1) and before the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the IRS. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld shall be credited to the Participant's Dependent Care Flexible Spending Account.

3.3 REFUND OF POST-TERMINATION CONTRIBUTIONS

Any contributions that are made to a Participant's Dependent Care Flexible Spending Account after the date of a Participant's termination of employment shall be promptly refunded.

ARTICLE IV BENEFITS

4.1 BENEFIT OPTIONS

A Dependent Care Flexible Spending Account will be established for each eligible Participant in the Plan in accordance with Article VI hereof.

4.2 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide Qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are included in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reject any election or reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any election or reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Dependent Care Flexible Spending Account Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited to the Employer.

ARTICLE V PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.3.

5.2 SUBSEQUENT ANNUAL ELECTIONS

In order to participate in the Plan during the upcoming Plan Year, each Participant must complete an Enrollment Form or the Administrator's online enrollment process during the Election Period. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which commences after the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may enroll in the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by failing to enroll for the next Plan Year during the Election Period;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

Any Participant failing to complete an Enrollment Form or the Administrator's online enrollment process pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No Salary Redirections shall therefore be authorized for such subsequent Plan Year.

5.4 CHANGE IN STATUS

Any Participant may change an election after the Plan Year (to which such election relates) has commenced and make a new election with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status that is acceptable under rules and regulations adopted by the IRS, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

- (a) **Legal Marital Status:** events that change a Participant's legal marital status including marriage, divorce, death of a spouse, legal separation or annulment.
- (b) **Number of Dependents:** Events that change a Participant's number of dependents, including birth, adoption, placement for adoption, death of a dependent or an

event that causes a child to satisfy or cease to satisfy the requirement for coverage under Code Section 21(b) due to the attainment of age 13 or other similar circumstances.

(c) **Employment Status:** Any of the following events that change the employment status of the Participant or spouse, such as a change from full-time to part-time employment, for you or your spouse, a leave of absence including FMLA leave taken by you or your spouse.

(d) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change in the dependent care provider used by the Participant. The availability of dependent care services from a new dependent care provider is similar to a new benefit package option becoming available. A cost change is allowable in the Dependent Care Flexible Spending Account only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(e) **Change in Residency.** A change in the place of residence of the spouse or dependent that will affect the cost of Employment-Related Dependent Care Expenses.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For purposes of this section, a change in status shall only include the above events or other events permitted by IRS regulations.

ARTICLE VI DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

6.1 ESTABLISHMENT OF ACCOUNT

This Dependent Care Flexible Spending Account is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

For the purposes of this Article and the Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for a Participant pursuant to this Article to which his/her Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2).

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services, which, if paid by the Participant, would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there is one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed, charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 6.2(d)(1) (or deemed to be, as described in Section 6.2(d)(1) pursuant to Section 6.2(d)(3)), or for a Qualifying Dependent as defined in Section 6.2(d)(2) (or deemed to be, as described in Section 6.2(d)(2) pursuant to Section 6.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any;

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse;

(4) Day Camps (no overnight camps);

(5) An Educational Institution for pre-school children. For older children, only expenses for before or after school programs are eligible;

(6) Household services in connection with the care of your qualified dependent performed by a provider who is responsible for the care of your qualified dependent.

(d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of residence as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account.

6.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to apply Benefit Dollars to Dependent Care Flexible Spending Account benefits.

6.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be credited each pay period by the amount that he has elected to apply toward his Dependent Care Flexible Spending Account.

6.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 6.12 hereof.

6.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT

Subject to limitations contained in Section 6.9 of this Program, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs eligible Employment-Related Dependent Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

6.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Plan Administrator shall furnish to each Employee who was a Participant and received benefits under Section 6.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year.

6.8 FORFEITURES—USE IT OR LOSE IT RULE

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.12 hereof) shall be forfeited to the Employer. In such event, the Participant shall have no further claim to such amount for any reason.

6.9 LIMITATION ON PAYMENTS

Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

6.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Dependent Care Flexible Spending Account by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Dependent Care Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited to the Employer.

6.11 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS

The Administrator shall direct the payment of all such Dependent Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive

reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
 - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
 - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
 - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if he or she is employed, or
 - (2) if the Participant's Spouse is not employed, that
 - (i) he or she is incapacitated, or
 - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

6.12 POST-TERMINATION CLAIMS

A Participant who terminates service with the Employer with a balance in his or her Dependent Care Flexible Spending Account and submits a claim for reimbursement under Section 2.7, may, be required to submit such proof of subsequent employment or active efforts to seek gainful employment as may be required by the Administrator.

ARTICLE VII BENEFITS AND RIGHTS

7.1 CLAIM FOR BENEFITS

(a) **Dependent Care Flexible Spending Account claims.** Any claim for Dependent Care Flexible Spending Account Benefits shall be made to the Administrator. For the Dependent Care Flexible Spending Account, if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. If the Administrator denies a claim, the Administrator may provide notice to the Participant, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (1) Specific references to the pertinent Plan provisions on which the denial is based;
- (2) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and
- (3) An explanation of the Plan's claim procedure.

(b) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:

- (1) request a review upon written notice to the Administrator;
- (2) review pertinent documents; and
- (3) submit issues and comments in writing.

(c) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(d) **Forfeitures.** Any balance remaining in the Participant's Dependent Care Flexible Spending Account at the expiration of the time for claims reimbursement for

each Plan Year shall be forfeited pursuant to Section 6.8, unless the Participant had made a written claim for such Plan Year, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited.

7.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any amounts forfeited by virtue of the Participant's failure to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by IRS regulations.

ARTICLE VIII ADMINISTRATION

8.1 PLAN ADMINISTRATION

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan;
- (f) To approve reimbursement requests and to authorize the payment of benefits; and
- (g) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the IRS regulations thereunder.

8.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

8.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder.

ARTICLE IX AMENDMENT OR TERMINATION OF PLAN

9.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

9.2 TERMINATION

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate this Plan, in whole or in part, at any time.

In the event the Plan is terminated, no further contributions shall be made and no further additions shall be made to the Dependent Care Flexible Spending Account. All payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited to the Employer.

ARTICLE X MISCELLANEOUS

10.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 10.11.

10.2 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or gender- neutral, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any IRS regulations thereunder relating to cafeteria plans.

10.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

10.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

10.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.7 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

10.8 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

10.9 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

10.10 GOVERNING LAW

This Plan is governed by the Code and the IRS regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Connecticut.

10.11 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

10.12 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

10.13 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with IRS Regulation 1.125-3.

10.14 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment and Reemployment Rights Act (USERRA) and the regulations thereunder.

IN WITNESS WHEREOF, this Plan document is hereby executed as of the 1st day of January 2017.

State of Connecticut
Office of the State Comptroller

By Kevin Lembo